

WJJA
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October 29, 1997

Federal Communications Commissions
Washington, D.C. 20554

Re: MM Docket No. 97-182

In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities.

To the Honorable Commissioners:

This letter is written on behalf of TV-49 Inc., (WJJA TV). WJJA-TV petitioned the Board of Zoning Appeals (Board) of the city of Milwaukee, Wisconsin for a variance to erect a transmitter tower at 1,053 feet. The Board denied the petition at a hearing held July 31, 1997. See attached copy of the Boards ruling.

Prior to hearing before the Board the proposed site and erection of a transmitter tower had been approved by the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA). The Boards ruling in effect makes a nullity of the discretion and judgement of the FCC and FAA. Congress granted exclusive jurisdiction of the airways to these agencies of government.

This is the precise set of circumstances that the proposed rule addresses. To allow the Boards's ruling to stand frustrates the intent of the FCC to rapidly implement digital television services. Absent preemption local zoning boards will be permitted to show favoritism or to punish. The Board in Milwaukee under similar circumstances has granted variances to every station except WJJA-TV. Several other television stations in the Milwaukee area are closer than 100 feet to the adjoining property, most notably Channel 24, Channel 58 was granted a variance for zoning and anchor point.

There is nothing to preclude municipalities from adopting more stringent and restrictive ordinances. Broadcasters that have stations in various localities would be faced with different rules and guidelines in each locality.

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Broadcasters and the public should have a uniform set of guidelines and directives across the nation. For the reasons stated herein and the reasons stated in the above referenced Notice of Proposed Rule Making released August 19, 1997 the management of WJJA TV supports the preemption of state and local zoning and land use restrictions on the siting placement and construction of broadcast station transmission facilities.

Sincerely,

Joel J. Kinlow, Sr.
Joel J. Kinlow, Sr.
President & CEO

BOARD OF ZONING APPEALS
CITY OF MILWAUKEE

In the Matter of the Appeal of:

Case No. 21011

Joel J. Kinlow

FEE OWNERS: Joel J. & Arvis K. Kinlow

Premises - 3872 North Fratney Street

The above matter came for hearing before the Board on July 31, 1997, based on an appeal from a denial of the Commissioner of Building Inspection of the City of Milwaukee dated June 5, 1997, of a request to construct a transmitter tower 1,053 ft. high and too close to the existing structures at the above referenced premises. A decision of the Board was rendered on July 31, 1997. The decision and the minutes were filed immediately thereafter in the office of the Board of Zoning Appeals pursuant to Wisconsin Statutes, 62.23 (7) (e) 3.

IT IS FOUND:

That the Building Inspector properly denied the request to construct a transmitter tower 1,053 ft. high and too close to the existing structures at the above referenced premises.

Variances are required by the Milwaukee Code of Ordinances for the following reasons:

Section 295-19-8-a

No structure shall be located within a circle having the transmitter tower as its center and a radius equal to 20% (210.6 ft.) of the height of the tower:

- there appears to be 4 buildings located within 210.6 ft. of proposed tower.

- one building is located within 4.66 ft. of this tower.

NOTES: 1. This is a self-supporting tower.

Appearances: Ed Richardson, City Development
Suzanne Misovie, Bldg. Inspection Dept.
Christopher Zimmerman, 2228 W. Wells
Joel Kinlow, 6608 W. Hope Ave.

The Board of Zoning Appeals, after receiving the Notice of Appeal and Application for Review from the petitioner, and after due notice to the parties in interest, and having heard the

evidence of the petitioner, interested parties, and the City of Milwaukee, and being fully advised in the premises,

IT IS CONCLUDED:

Based on the testimony heard by the Board, the Variance as required by Section 295-19-8-a of the Milwaukee Code of Ordinances is not consistent with:

- Preservation of Intent; that the variance would not be inconsistent with the spirit, purpose and intent of the regulations for the district in which it is requested.
- Exceptional Circumstances; that exceptional, extraordinary or unusual circumstances or conditions apply to the lot or intended use that do not apply generally to other properties or uses in the same district, and the variance is not of so general or recurrent nature to suggest amendment of the regulation.
- Preservation of Property Rights; that the variance is necessary for the preservation and enjoyment of the same substantial property rights which are possessed by other properties in the same district and same vicinity.
- Absence of Detriment; that the variance will not create substantial detriment to adjacent property, and will not materially impair or be contrary to the spirit, purpose and intent of this chapter, or the public interest.
- Hardship; that the alleged difficulty or hardship is not self-imposed nor is it based solely on economic grounds.

provided that the conditions contained herein are complied with,

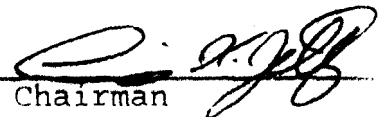
On the basis of the Findings, Conclusions, and the record herein:

IT IS ORDERED AND DETERMINED:

That a Variance is denied for permit to construct a transmitter tower 1,053 ft. high and too close to the existing structures at the above referenced premises.

Dated, August , 1997.

BOARD OF ZONING APPEALS

By 
Acting Chairman